

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

RANDY THOMAS LANIER,

Defendant.

Case No. 87-cr-40070-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on the motion of defendant Randy Thomas Lanier for leave to proceed on appeal *in forma pauperis* (Doc. 924). Lanier has appealed the Court's dismissal of his Rule 60(b)(6) motion seeking to vacate its prior ruling denying a motion under 28 U.S.C. § 2255 to vacate, set aside or correct his sentence. The Court found that Lanier's motion was an unauthorized successive § 2255 petition over which this Court had no jurisdiction.

A federal court may permit a party to proceed on appeal without full pre-payment of fees provided the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). A frivolous appeal cannot be made in good faith. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). The test for determining if an appeal is in good faith or not frivolous is whether any of the legal points are reasonably arguable on their merits. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738 (1967)); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

Lanier's appeal is frivolous and not taken in good faith. Lanier's Rule 60(b)(6) motion is a successive § 2255 motion, and it is beyond question that this Court does not have jurisdiction to entertain a successive § 2255 motion absent certification from the Seventh Circuit Court of

Appeals pursuant to § 2255, ¶ 8. Therefore, dismissal of his successive § 2255 motion for lack of jurisdiction was correct. *See Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996). Lanier cannot present any legal points that are reasonably arguable on their merits. Accordingly, the Court **DENIES** Lanier's motion for leave to proceed *in forma pauperis* (Doc. 924) and **CERTIFIES** that this appeal is not taken in good faith.

IT IS SO ORDERED.

DATED: June 14, 2007

s/ J. Phil Gilbert

**J. PHIL GILBERT
DISTRICT JUDGE**